



GCloud Services Terms and Conditions

Between

Somerford Associates Limited

AND

XXXXXXX (Client)

Dated xx/xx/xx

Introduction

This time and materials Services Agreement ("Agreement") is between Somerford Associates ("Somerford") and xxxxxxxxxxxxxxxx ("Customer"). This Agreement defines the scope of the services ("Services") that Somerford Associates will provide to the Customer.

Project Summary

To be completed for each project

Project Conditions

- Services are performed on a "time and materials" basis. The cost set out in this Agreement is a "not to exceed" amount. Should any items require additional time to complete then an additional Agreement will be agreed by both parties.
- The Customer will provide remote access via WebEx, MS Teams or another comparable remote access solution to the Somerford Engineer in order to facilitate the delivery of offsite Services and/or troubleshooting as required.
- Every effort has been made to account for whether a particular service will be delivered offsite or onsite. However, in certain circumstances, services previously designated as "onsite" may be performed remotely (offsite) and in such case no credit for the difference in the fees associated with these different "day types" will be provided to the Customer.
- If after six months from the date of the Effective Date there remain unused/undelivered days of services, the Customer will contact Somerford Associates to discuss scheduling services for those days. Unless otherwise agreed in writing, any unused and unscheduled days of services will expire one year from the date of the signing of this SOW, at which point Somerford Associates will be under no obligation to perform any additional services under this SOW. No credit/refund of unused service days will be provided.

Requirements

Please itemise each requirement, providing a name and description for each individual work item.

Work Item Name	Work Item Description

Contacts

	Name	Email	Phone
Somerford Commercial			
Somerford Technical			
Client Management			
Client Technical			

Client Responsibilities

The work will be performed under the scope as defined in this Agreement. The Agreement is subject to the following assumptions:

The client

- will provide access to equipment and personnel (including technical resources) necessary to complete the project. These resources will be provided when they are needed in order to avoid project delays.
- will appoint a single point of contact for the duration of the project. This person will have project management responsibilities, be technically astute and familiar with change request processes as well as have the authority to expedite if necessary.
- must provide Somerford a one (1) week notice for any cancellation or change of scheduled services or they will be charged for the originally scheduled time and any applicable travel change fees.
- will provide Somerford with access to the required servers and software to complete the Agreement requirements.
- will provide the Somerford consultant(s) with either access to the Internet or access to a computer with access to the Internet as required.
- prior to the testing phase, the Customer is responsible for producing the necessary testing scenarios.
- will either provide Somerford with a client contact that has the proper administrative access to all applications and servers and will have the ability to reboot servers as necessary within twenty-four (24) hours of request or will provide Somerford with this capability.
- will ensure all systems meet the minimum system requirements.
- will ensure all systems and applications that are part of the SOW must be on supported platforms.

Amendment to the Scope

During the performance of the engagement, certain issues may arise that effectively prevent the completion of the work outlined in this Agreement within the planned time frame, such as, but not limited to, hardware or network failures or outages in the Client's environment, problems with the Client's in-house or third-party software, or the unavailability of key Client personnel. If this situation occurs, the designated Somerford Consultant will work with the Client to identify and document the scope change, its impact on the project approach, timing, fees, resources, and the quality of project results. Somerford will document this and any change in scope must be agreed to in writing prior to Somerford reengaging on the project and will require the signature of both

Somerford and the Client. Any other problems, disputes or issues arising during this engagement should be communicated as soon as possible after identification to the designated Somerford Consultant for resolution.

Fees

Somerford professional services rates are as per the G-Cloud 15 price list. All prices are quoted exclusive of VAT

Payment

Invoices are to be paid within 30 days from the invoice date.

Duration

Somerford estimates that the Agreement will require the following number of professional services days to complete.

Quote

x days of professional services * £x's

Data Processing

Subject Matter of Processing

Personal and Commercially sensitive Data relating to [ADD DETAILS] which Somerford may process in carrying out its legitimate business interests and obligations under this SoW.

Duration of Processing

For the later of Somerford's fulfilment of its obligations to the Customer or termination of this SoW.

Nature of Processing

Collection, and such organisation, adaptation, storage, retrieval, consultation, use, disclosure, making available, restriction, erasure and destruction as is necessary for the fulfilment of this SoW.

Purpose

Carrying out Somerford's legitimate business interests and obligations to the Customer pursuant to this SoW.

Data Subject Types

Customer employees, economic and financial documents, system logs or data provided in confidence by customers for the fulfilment of this SoW.

PLEASE READ THESE CUSTOMER TERMS OF SERVICE CAREFULLY: Prior to acknowledging acceptance, please be sure to carefully read and understand all of the terms, rights, and restrictions described in this Imprivata Master Cloud Services Agreement (this “Agreement”). This Agreement is a legal agreement between the entity identified in the applicable Order Form as the customer (“Customer”) and Imprivata, Inc. (“Imprivata”) for the Services (as defined below). Customer and Imprivata may be referred to in this Agreement individually as a “party” or jointly as the “parties”. IMPRIVATA PROVIDES THE SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY OPENING, INDICATING ASSENT ELECTRONICALLY, OR DOWNLOADING, INSTALLING, COPYING, OR USING THE SERVICES, THE CUSTOMER AGREES TO ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES THAT THE CUSTOMER IS LEGALLY BOUND BY THESE TERMS. IF CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, THEN THE INDIVIDUAL ACCEPTING THESE TERMS HEREBY REPRESENTS AND WARRANTS THAT THEY HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO THESE TERMS. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT CONTINUE DOWNLOADING, INSTALLING, COPYING OR USING THE SERVICES.

This Agreement, together with the applicable appendices referenced below, and the applicable Order Form governs Customer’s use of the Imprivata Services.

Appendices	Description
Cloud Services	
Customer Connect	Subscription purchases of Customer Connect are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/customer-connect
Enterprise Access	Subscription purchases of Enterprise Access are also subject to the product specific terms found

Appendices	Description
FairWarning	at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/enterprise-access Subscription purchases of FairWarning are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/fairwarning
GroundControl	Subscription purchases of GroundControl are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/groundcontrol
Biometric Patient Identity	Subscription purchases of Biometric Patient Identity are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/biometric-patient-identity
Access Intelligence Platform	Subscription purchases of Access Intelligence Platform are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/access-intelligence
Managed Services	
Managed Services	Managed Services purchases are also subject to the Managed Services terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/managed-services
Support	
Maintenance and Support	Subscription purchases of Imprivata's Cloud Services include maintenance and support as further described at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/maintenance-and-support

Appendices	Description
Hardware	Hardware purchases are subject to the terms found at https://www.imprivata.com/uk/imprivata-master-cloud-services-agreement/hardware

Definitions

The following terms shall have the following meanings:

“Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Cloud Service(s)” means the applicable Imprivata web-based applications, tools and platforms purchased by Customer as set forth on an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as further described in the applicable appendices.

“Confidential Information” means information furnished or made available directly or indirectly by the disclosing party to the receiving party which (i) is marked or clearly indicated to be confidential, proprietary, or with a similar designation; or (ii) a reasonable person would understand the information was confidential or proprietary information. Confidential Information shall not include Personal Data, which shall be governed by the Data Processing Appendix as set forth below, or protected health information, which shall be governed by a Business Associate Agreement as set forth below.

“Customer Data” means information that Customer transmitted, or that was transmitted on Customer’s behalf, to or through the Cloud Services, or that Customer stores, or displays within the Cloud Service, or that is otherwise used or processed in connection with Customer’s Cloud Services account. For the avoidance of doubt, Customer Data does not include Usage Data or any other information reflecting the access or use of the Services by or on behalf of Customer.

“Documentation” means Imprivata’s standard online user guides, documentation, product specifications, and training materials related to use of the applicable Cloud Services (excluding marketing materials), as updated from time to time and made available by Imprivata.



“Force Majeure Event” means an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party.

“Hardware” means Imprivata branded hardware devices purchased by Customer as set forth on an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as further described in the Hardware Appendix.

“Imprivata Order Form” or “Order Form” means the quote or other supplemental document (as applicable) issued by Imprivata, which specifies the Services, and/or Hardware to be purchased by Customer, and the price associated with each.

“Imprivata Materials” means the Services, Documentation, and Imprivata systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Imprivata in connection with the Services or otherwise comprise or relate to the Services or Imprivata systems. For the avoidance of doubt, Imprivata Materials include Usage Data and any information, data, or other content derived from Imprivata’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

“Managed Services” means the applicable managed services to implement and operate the Cloud Services on behalf of Customer purchased under an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as described in the Managed Services appendix.

“Personal Data” shall have the meaning as defined in the Data Processing Appendix.

“Professional Services” means any installation, migration or implementation services, and any additional consultancy or professional services purchased under an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as described in a Statement of Work (“SOW”).

“Services” means, collectively, the Cloud Services, Managed Services, and Professional Services.

“Subscription Term” means the duration of Customer’s subscription to the applicable Cloud Services and Managed Services as set forth in the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller).

“Support” means the services that Imprivata provides to maintain and support the Imprivata Cloud Services, which services are further described in the Maintenance and Support Appendix.

“User” means an individual authorized by Customer to use the Cloud Services pursuant to a subscription of the applicable Cloud Services purchased (as indicated in the applicable Imprivata Order Form or its equivalent if purchasing through an authorized reseller).

Use of the Services

- 1. Access to Cloud Services. Subject to the terms and conditions of this Agreement and Customer’s payment of the applicable fees, Imprivata will permit Customer, during the Subscription Term, to: (i) access and use the Cloud Services solely for Customer’s internal business purposes; and (ii) provide Users access and use of the Cloud Services solely for the benefit of Customer and the operation of Customer’s business and in compliance with this Agreement. Customer is solely responsible for provisioning Users on the Cloud Services, as applicable, including: (a) methods of authenticating Users; (b) restricting access by User or group; (c) managing administrator privileges; (d) deauthorizing Customer personnel who no longer need access to the Cloud Services; and (e) maintaining security and confidentiality of User credentials. As between Customer and Imprivata, Customer is solely responsible for all activity that occurs under its User accounts. Imprivata reserves the right, in its sole discretion, to make any changes to the Cloud Services and applicable Documentation that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Imprivata’s services to its customers; (ii) the competitive strength of or market for Imprivata services; or (iii) the Cloud Services’ cost efficiency or performance; or (b) to comply with applicable law.**



- 2. Affiliates.** Customer may provide access and use of the applicable Cloud Services to Customer's Affiliate's Users or allow them to receive such Cloud Services purchased under an applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller); provided that, Customer is responsible for ensuring that each Affiliate's use of such Cloud Services is in full compliance with the terms of the Agreement. Customer and each Affiliate shall be jointly and severally liable for all claims and liabilities arising under this Agreement related to the Cloud Services. Customer acknowledges and agrees that the usage of each Affiliate will be included when measuring usage and subscription compliance (including incremental subscription fees, if applicable). By executing an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- 3. Customer Responsibilities.** Customer will (a) ensure all Users comply with this Agreement and all Imprivata Order Forms (or its equivalent if purchasing through an authorized reseller), (b) use commercially reasonable efforts to prevent unauthorized access to or use of Cloud Services, and notify Imprivata promptly of any such unauthorized access or use, (c) use Cloud Services only in accordance with the Documentation and applicable laws and government regulations, (d) be responsible for the Customer systems through which the Cloud Services are accessed; (e) be responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Data, including any viruses, Trojan horses, worms or other harmful programming routines contained in Customer Data; (f) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data and provided Customer Data to Imprivata, (g) be responsible for providing all required notices and obtaining all required consent(s) from both individuals and entities for its and its Affiliates' provision of Customer Data to Imprivata, including for transferring Customer Data from one state, province, country, or locality to another at Customer's or its Affiliates' request and any resulting legal effects of such transfers, and (h) comply with terms of service of non-Imprivata applications with which Customer uses Cloud



Services. The Cloud Services do not replace the need for Customer to maintain regular back-up procedures with respect to Customer Data. Customer must in a timely manner supply the information, materials, and data Imprivata reasonably requires to provide the Services. Imprivata will have no responsibility for delays that result from the failure of Customer to provide such required information, materials, and data or for Customer's failure to cooperate in the performance of Services as reasonably requested. Customer is responsible for selecting and configuring the Services it deems necessary to obtain the results desired or comply with laws applicable to Customer as determined by Customer. The Services may include recommendations or guidance which must be evaluated by Customer.

- 4. Usage Restrictions. Customer is not granted a license to any intellectual property rights under this Agreement. The Imprivata Materials are protected by intellectual property laws, are the property of Imprivata or its licensors (if any), and Imprivata retains all ownership rights to them. Customer shall access and use the Imprivata Materials solely for its intended purpose as described in the Documentation. Any other use is strictly prohibited. Customer will not (a) make any Cloud Service or the Documentation available to any third party (other than Users in accordance with this Agreement), or use any Cloud Service or the Documentation for the benefit of anyone other than Customer or its Users, (b) sell, resell, sublicense, distribute, rent or lease any Cloud Service or any portion thereof, including the Documentation, or include any Cloud Service in a service bureau, time sharing or outsourcing offering; (c) interfere with or disrupt the integrity or performance of any Cloud Service or third-party data contained therein, (d) attempt to gain unauthorized access to any Cloud Service or its related systems or networks, (e) copy a Cloud Service or any part, feature, function or user interface thereof, (f) access any Cloud Service in order to build a competitive product or service, (g) reverse engineer any Cloud Service, in whole or in part, nor use any methods to gain access to the source code or infrastructure of the Cloud Service, in whole or in part, or (h) perform any benchmarking, security, or penetration testing on any Cloud Service, or any portion thereof, or Imprivata's performance of the Cloud Service. Customer will use commercially reasonable measures to ensure**



Customer's use of the Cloud Services do not store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses. Customer shall not provide any competitor of Imprivata (including any employee or contractor of such competitor) with access to or use of the Cloud Services, including by read-only access, direct access through a User identification and password information, or otherwise.

- 5. Professional Services.** In the event Customer purchases Professional Services to be performed by Imprivata, Customer must sign an SOW detailing the project specifications for such services. Unless otherwise agreed in writing, any unused Professional Services will expire one year from the date of the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller), at which point Imprivata will be under no obligation to perform any additional services under the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller). Notwithstanding the foregoing, no credit/refund will be issued for any unused Professional Services under any circumstances. Imprivata shall retain all intellectual property rights in and to anything developed by Imprivata in connection with the SOW. Customer agrees that no proprietary materials created in connection with this Agreement are "works made for hire" as that term is used in connection with the U.S. Copyright Act. Imprivata grants the Customer a non-exclusive, non-transferable, royalty-free license to use anything expressly identified as a deliverable under the SOW to the extent necessary to enable Customer to make reasonable use of the Services and resulting deliverables. Any agreement made verbally or via any other means outside of the contents of a SOW is not binding and Imprivata is under no obligation to provide those services.
- 6. Managed Services.** In the event Customer purchases Managed Services to be performed by Imprivata, the specifications for such services shall be as set forth in the Managed Services Appendix or the applicable SOW.
- 7. Support.** Imprivata shall provide Support as further described in the Maintenance and Support Appendix. Support is included in the Cloud Service subscription cost and shall commence on delivery of the Cloud Service purchased under the applicable Imprivata Order Form (or its



equivalent if purchasing through an authorized reseller) and continue for the duration of the Subscription Term. Imprivata will provide support for Hardware as further described in the Hardware Appendix.

8. **Right to Audit.** Customer consents to Imprivata auditing it to ascertain Customer's compliance with this Agreement, including the number of Users, Affiliates and any other applicable metric used in pricing, such audit to be conducted by Imprivata or an independent auditor during Customer's standard business hours and at Customer's expense. If the inspection reveals an underpayment of any subscription fees, Customer shall promptly pay to Imprivata the deficit.
9. **High Risk Activities.** The Cloud Service is not fault-tolerant and is not developed or intended for use - including evaluation or trial use - in hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, direct life support machines or weapons systems, or any other application in which the failure of the Cloud Services could lead to death, personal injury, or severe physical or environmental damages ("High Risk Activities"). Imprivata specifically excludes any express or implied warranty of fitness for High Risk Activities.

Export Controls and Economic Sanctions

Customer agrees to comply with all applicable export laws and regulations, including but not limited to: (1) the Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security; and (2) the trade and economic sanctions maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control. Customer shall be responsible for compliance with such laws and regulations and will obtain any required licenses and other permissions for Hardware and Services ordered pursuant to this Agreement or otherwise received from Imprivata. Without limitation of the foregoing, Customer shall not export, re-export, release, or transfer, whether directly or indirectly, the Services, Hardware, or any part thereof (1) to any country or region subject to comprehensive economic sanctions (i.e., currently Cuba, Iran, North Korea, Syria, and the Crimea Region of Ukraine), including any person or entity in any such country or region and government or government instrumentalities, wherever located,

of any such country or region; or (2) to individuals or organizations, including Customer, listed on: the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons or Consolidated Sanctions List; or any other list of parties proscribed by the U.S. Government. Customer shall not export, re-export, release, or transfer the Services, Hardware, or any part thereof, including technical data and services, to any party, if Customer knows or has reason to know that the products, data, or services (1) are intended, entirely or in part, for a "military-intelligence end use" or a "military-intelligence end user" (as those terms are defined under 15 C.F.R. § 744.22) in Burma, Cambodia, China (including Hong Kong), Russia, or Venezuela; or (2) will be used for activities related to: (i) nuclear proliferation; (ii) chemical or biological weapons; or (iii) missile proliferation (including drone/unmanned aerial vehicles capable of 300 km or longer range). Upon request from Imprivata, Customer agrees to certify compliance with these terms and provide information sufficient to verify such compliance. Customer shall indemnify and defend Imprivata from and against any loss, cost, damages, or expenses of any kind resulting from any third-party claim (including any government investigation) alleging any failure by Customer, its employees, or agents to act in accordance with this section.

U.S. Government Restricted Rights
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The Cloud Services and any firmware installed on Hardware is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting in part of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Cloud Services with only those rights set forth herein. Contractor/Manufacturer is: Imprivata, Inc., 20 CityPoint, 6th floor, 480 Totten Pond Rd., Waltham, MA 02451 U.S.A.

Payment and Shipping

1. **Payment.** Imprivata will invoice Customer for the fees set forth on the applicable Imprivata Order Form. Customer will pay invoices within 30 days of each invoice date. All purchases of the Services and Hardware



are non-cancellable and non-refundable except as explicitly set forth otherwise in this Agreement.

2. **Payment Dispute.** If there is a reasonable, good-faith dispute as to any of the fees owed to Imprivata by Customer in any invoice, then Customer may withhold disputed fees provided that Customer: (i) pay any undisputed fees contained in said invoice; (ii) deliver written notice of fees disputed to Imprivata within thirty (30) days of the invoice date, and (iii) enter into good faith negotiations to resolve the remaining dispute. In the event the parties are unable to resolve such dispute within ninety (90) days of entering into negotiations, then Imprivata may suspend the Services or terminate this Agreement upon fifteen (15) days advanced written notice thereafter. This paragraph shall not apply to any other dispute between the parties.
3. **Suspension of Service.** If any undisputed fees owed by Customer under this Agreement are thirty (30) or more days overdue, Imprivata may, without limiting its other rights and remedies, (a) make late payments subject to a charge of the lesser of 1.5% per month or the maximum allowed by law during such time as any payment is late as well as collection costs, including reasonable collection and attorney's fees; and/or (b) suspend the Services to Customer until such fees are paid in full.
4. **Taxes.** Imprivata's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, hosting, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Imprivata has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Imprivata will invoice Customer and Customer will pay that fee unless Customer provides Imprivata with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Imprivata is solely responsible for taxes assessable against Imprivata based on its income, property and employees.
5. **Shipping.** All shipments are Incoterms 2010: FCA, Seller's Factory. Third party authentication devices are Non-Cancelable/Non-Returnable.



Customer shall bear all costs of transportation, shipping, and insurance. Risk of loss and title (except for software) passes to you upon delivery to the carrier. Customer represents and warrants to Imprivata that it will not export or import the Services or any portion thereof or any Imprivata confidential information or related technical data in violation of applicable laws or regulations, including without limitation US export restriction laws and regulations relating to sales to nationals or residents of foreign nations, and Customer agrees to indemnify and hold Imprivata harmless from and against claims, losses, costs, or liability due to its breach of this warranty.

Term and Termination

- 1. Term. This Agreement commences on the execution or acceptance by Customer of the first Order Form (or its equivalent if purchasing through an authorized reseller) and, unless terminated as set forth below, shall continue until the expiration or termination of the last existing Subscription Term. The length of Subscription Terms shall be specified in the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller).**
- 2. Termination for Cause. Either party may terminate this Agreement, applicable SOW and/or applicable Imprivata Order Form by written notice if the other party: (i) commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice specifying such breach in reasonable detail; or (ii) becomes insolvent, commences dissolution proceedings or ceases to operate in the ordinary course of business. In addition, Imprivata may terminate this Agreement or any Imprivata Order Form immediately if Customer breaches Section 2.4 (Usage Restrictions).**
- 3. Effect of Expiration or Termination. Upon expiration or termination of this Agreement, SOW or Imprivata Order Form, by either party, all Services obtained by Customer, under this Agreement, SOW and/or Imprivata Order Form (as applicable) shall terminate, and Customer shall cease using the applicable Cloud Services and Imprivata will cease providing Managed Services and Professional Services. Upon any such expiration or termination, Customer shall promptly remit to Imprivata all unpaid fees due, or to become due, under this Agreement, SOW and/or**



Imprivata Order Form (as applicable). In addition to those provisions which by their nature are intended to survive any expiration or termination of this Agreement or any individual Imprivata Order Form, Section 8 (Confidentiality) and Section 11 (Limitation of Liability) shall specifically survive such expiration or termination.

Data

- 1. Usage Data.** Imprivata shall own all rights, title, and interests in and to the aggregated de-identified and/or anonymized data derived from or generated from Customer's and its Users' use of the Services that do not specifically identify Customer or an individual, including all usage statistics, analytic data, benchmarking data and data that relates to the performance or functionality of the Services ("Usage Data"). For greater certainty, the parties acknowledge that Usage Data shall not be considered part of Customer Data and that Imprivata shall own all rights, title, and interests in and to products and services, including modifications or improvements to existing products and services, derived from Usage Data. Imprivata agrees that all uses of Usage Data shall be in accordance with applicable law.
- 2. Customer Data.** Customer grants Imprivata and its Affiliates a license to use, host, copy, transmit, and display Customer Data during the term of this Agreement solely as necessary or useful for Imprivata to provide, update, and enable functionality of the Services. Imprivata agrees that all uses of Customer Data shall be in accordance with applicable law and is for Imprivata's internal business purposes only, subject to the confidentiality obligations set forth herein. Imprivata does not sell, as such is defined in certain applicable laws, Customer Data to any third party. Subject to the limited licenses granted herein, Imprivata acquires no right, title or interest from Customer or its licensors under this Agreement in or to Customer Data.
- 3. Biometric Information.** Customer agrees that as between Customer and Imprivata, Customer is the party that captures, enrolls, or otherwise collects the biometric information processed in connection with the Agreement, and Customer represents and warrants that it complies, and will comply, with all laws, rules, regulations, and orders applicable to the processing of such information under the Agreement, including all

applicable biometric and privacy laws and regulations. Customer represents and warrants that it will provide all required notices and obtain all required consent(s) and/or written release(s) from any individuals from whom biometric information is collected in connection with Customer's use of the Cloud Services. Applicable Cloud Services may have consent workflows enabled to fulfill any separate and distinct duty Imprivata may have. Such prompts and collection of consent shall not be understood, interpreted, or construed to relieve Customer of its own duties. Customer agrees to indemnify and hold Imprivata harmless from and against any and all third-party claims, demands, actions, threatened actions, governmental enforcement proceedings, costs (including reasonable attorneys' fees) liabilities, fines, penalties, and other loss arising or resulting from Customer's breach or alleged breach of the warranties in this Section 7.3. Any such indemnification obligations shall be in accordance with the procedures set forth in Section 10. For the purpose of this Section 7.3, "biometric information" means information defined as biometric information under applicable laws, including without limitation, a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.

4. **Protection of Personal Data.** To the extent that Imprivata processes Personal Data in connection with the Services, the parties agree to comply with the Data Processing Addendum ("DPA") found at <https://www.imprivata.com/uk/data-processing-addendum>, which is incorporated herein by reference, unless the parties have executed a DPA, in which case such agreement shall govern. The DPA describes how Imprivata will handle Personal Data on Customer's behalf in connection with the Services provided under this Agreement. For the sake of clarity, the EU-U.S. Data Privacy Framework, UK Extension to the EU-U.S. DPF, and Swiss-U.S. DPF (collectively, the "DPF") shall govern third country data transfers. In the event that the DPF does not apply, reliance shall shift to the DPA, inclusive of the Standard Contractual Clauses.
5. **Regional Data Hosting.** Imprivata can store Customer Data in a specific location or geographical region where Imprivata does business (e.g., North America or Europe) as part of Customer's subscription subject to the terms of this Agreement.

6. **Transfers of Customer Data for Support.** Imprivata and its Affiliates may utilize personnel (including subcontractors) to meet its obligations under this Agreement related to the Services. Examples include, but are not limited to, troubleshooting, support, engineering resources, etc. Customer acknowledges that Confidential Information (if provided by the Customer in screenshots and/or log files) could be accessed and viewed by offshore personnel in the provision of the aforementioned support. Imprivata shall ensure that any such personnel abide by the terms of this Agreement. Notwithstanding the foregoing, Customer shall not share with or transfer to Imprivata (e.g., via use of the Services, or through screen-sharing or transmitting screenshots in the course of support and maintenance) Special Categories of Data or Sensitive Data (as such are defined in the DPA) or other data that imposes specific data security or data protection obligations on Imprivata in addition to or different from those specified in the Documentation or which are not already provided as part of the Services without Imprivata's prior written consent.
7. **Business Associate Agreement.** To the extent applicable to the Services provided to Customer, Imprivata agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (PL 104-91), the HITECH Act provisions of the American Recovery and Reinvestment Act of 2009 (PL 111-5) and regulations enacted by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 – 164 solely as it relates to the performance of Imprivata's obligations hereunder. The parties agree to comply with the provisions of the Business Associate Agreement found at <https://www.imprivata.com/uk/business-associate-agreement>, which is incorporated herein by reference, unless the parties have executed a Business Associate Agreement, in which case such agreement shall govern. In the event of conflict between the Business Associate Agreement and any provision of this Agreement, the terms of the Business Associate Agreement shall control.

Confidentiality

Each party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to



(i) prevent use of the other party's Confidential Information for any purpose other than to carry out its rights and obligations hereunder, and (ii) prevent the disclosure of the other party's Confidential Information other than to its employees or contractors who must have access to such Confidential Information for such party to exercise its rights and perform its obligations hereunder and who each agree to be bound by agreements with a duty of confidentiality no less protective of confidential information than provided herein, and each party shall be responsible to ensure that its employees and consultants comply with the restrictions set forth herein. The parties' obligations set forth in this section shall not apply with respect to any portion of the Confidential Information that: (i) was in the public domain at the time it was communicated to the receiving party; (ii) entered the public domain through no fault of the receiving party; (iii) is rightfully received by the receiving party from a third party without a duty of confidentiality; (iv) is independently developed by the receiving party without use of the Confidential Information; or (v) consists of generalized ideas, concepts, know-how or techniques in intangible form that is incidentally retained in the unaided memories of persons who have had authorized access to Confidential Information (provided that this exception shall not be construed to grant to either party a license to the other party's copyrights or patents beyond those otherwise granted in this Agreement). If the receiving party is legally required to disclose any of the disclosing party's Confidential Information, then it may do so provided that the receiving party (i) provides prompt written notice to the disclosing party (to the extent permitted by law), (ii) provides all reasonably requested assistance in attempting to limit the scope of the disclosure, and (iii) only discloses Confidential Information to the extent actually required by law.

Warranties

- 1. Imprivata warrants that the Cloud Services will conform substantially to Imprivata's Documentation during the Subscription Term. This warranty is a limited warranty. It does not apply to (a) Cloud Services and other products identified in their product description as being sold or licensed "as-is" or (b) Cloud Services and other products identified as "beta" or "pre-release" or the like; all of which are supplied on an "as-is" basis without any warranty of any kind. Imprivata will have no obligation hereunder if the alleged defect is due to (x) causes not within**



Imprivata's reasonable control, including accident, alteration, abuse, or misuse or (y) use of the Cloud Services other than in accordance with the Documentation. IMPRIVATA'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY BREACH OF THE FOREGOING CLOUD SERVICES WARRANTY IS THAT IMPRIVATA SHALL, AT ITS OPTION, REPAIR OR REPLACE THE CLOUD SERVICES SO THAT IT CONFORMS TO THE LIMITED WARRANTY SET FORTH ABOVE OR TERMINATE THIS AGREEMENT AND, REFUND TO CUSTOMER THE PRICE PAID FOR THE REMAINDER OF THE THEN-CURRENT SUBSCRIPTION TERM.

- 2. Imprivata warrants that it will provide any Professional Services and Managed Services in a good and workmanlike manner consistent with industry standards. THIS WARRANTY IS A LIMITED WARRANTY. FOR ANY BREACH OF THE FOREGOING WARRANTY, IMPRIVATA'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR IMPRIVATA TO RE-PERFORM SUCH SERVICES. Customer must notify Imprivata in writing of any such breach within thirty (30) days after the performance of the applicable Services.**
- 3. IMPRIVATA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE SPECIFIED IN THIS SECTION 9 AND ALL OTHER REPRESENTATIONS OR WARRANTIES (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) ARE EXPRESSLY DISCLAIMED, INCLUDING THOSE WARRANTIES AS TO QUALITY, CONDITION, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, IMPRIVATA DOES NOT WARRANT (I) THAT THE SERVICES OR THE DOCUMENTATION WILL BE FREE FROM ANY INTERRUPTIONS, DELAYS, INACCURACIES, SERVER DOWN-TIME, ERRORS, OR OMISSIONS, (II) THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY RECEIVING THE SERVICES OR USING THE DOCUMENTATION, (III) THE SERVICES OR DOCUMENTATION WILL MEET CUSTOMER'S REQUIREMENTS, OR (IV) USE OF THE SERVICES OTHER THAN AS PERMITTED IN THIS AGREEMENT OR THE DOCUMENTATION. THE CLOUD SERVICES ARE A MONITORING AND/OR ADMINISTRATIVE TOOL DESIGNED TO ENABLE CUSTOMER IN THE MANAGEMENT OF CUSTOMER'S BUSINESS OPERATIONS. IMPRIVATA DOES NOT PROVIDE**



LEGAL OR SECURITY ADVICE AND DISCLAIMS RESPONSIBILITY FOR ANY SERVICES CUSTOMER INTERPRETS AS SUCH. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, OR PERFORMANCE OF THE SERVICES OR DOCUMENTATION NOT CONTAINED IN THIS AGREEMENT, OR RECOMMENDATIONS MADE AS PART OF OR IN CONNECTION WITH THE SERVICES, SHALL BE DEEMED TO BE A WARRANTY, CONDITION, REPRESENTATION, OR GUARANTEE BY IMPRIVATA. Customer will have sole responsibility for the adequate protection and backup of Customer's data and/or equipment. Imprivata is not responsible for restoring lost data or damage to Customer Data that results from Customer's actions. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE, AND COUNTRY TO COUNTRY.

Indemnification

- 1. Indemnification by Imprivata. Imprivata will defend Customer from and against third party claims (and will pay any resulting judgements awarded by a court of final jurisdiction or settlements entered into in accordance with Section 10.3 below) arising solely from a claim that the Cloud Services as provided by Imprivata infringe any United States or European Union patent or any copyright rights (in or of countries that are signatories to the Berne Convention) of a third party. Imprivata's obligation is subject to Customer's compliance with the procedures set forth in Section 10.3. Notwithstanding anything to the contrary herein, Imprivata shall have no obligation to indemnify Customer for infringement claims arising in whole or in part from: (1) designs, processes, specifications or modifications originated or requested by Customer; (2) the combination of the Cloud Services or any part thereof with other equipment, software, process, or products not supplied by Imprivata if such infringement or misappropriation would not have occurred but for such combination; (3) Customer's failure to install an update, where same would have avoided such claim or (4) Customer's use of the Imprivata Materials in violation of Section 2.4. Customer will indemnify and hold Imprivata harmless from and against claims that are the subject of clauses (1)–(3). In the event that the use or sale of any of the Cloud Services is enjoined or, in Imprivata's judgment may become**

subject to a claim of infringement, Imprivata may: (i) procure for Customer the right to continue to use the Cloud Services, (ii) replace the infringing portion of the Cloud Services with a materially functionally equivalent product or modify it to address any potential infringement, or (iii) remove Customer's access to the Cloud Services and reimburse Customer for any prepaid fees for the remainder of the applicable Cloud Services Subscription Term on a pro-rata basis. THIS SECTION STATES IMPRIVATA'S ENTIRE LIABILITY TO CUSTOMER AND CUSTOMER'S SOLE REMEDY FOR ANY INFRINGEMENT CLAIMS CONCERNING THE CLOUD SERVICES.

2. **Indemnification by Customer.** Customer will defend Imprivata against any claim, demand, suit or proceeding made or brought against Imprivata by a third party (a) alleging Customer's unauthorized use of the Cloud Services infringes or misappropriates such third party's intellectual property rights, or (b) alleging that Customer Data or Customer's use of Customer Data with the Cloud Services violates applicable law or regulation (each a "Claim Against Imprivata"), and will indemnify Imprivata from any damages, attorney fees and costs finally awarded against Imprivata as a result of, or for any fees paid by Imprivata under a court-approved settlement of, a Claim Against Imprivata. Customer's obligation is subject to Imprivata's compliance with the procedures set forth in Section 10.3.
3. **Indemnification Procedure.** If a party (the "Indemnified Party") becomes aware of any matter for which it has a right to indemnity under this Agreement (each an "Action"), the Indemnified Party will promptly notify the other Party (the "Indemnifying Party") in writing of such Action, provided however, that the failure to promptly notify shall not affect the obligations of the Indemnifying Party except to the extent that such failure actually prejudiced the Indemnifying Party. The Indemnified party will grant sole control over the defense and settlement of the Action to the Indemnifying Party (and its insurer, if applicable), and cooperate in the defense of such Action at the Indemnifying Party's expense as reasonably requested. The Indemnifying Party has no obligation to indemnify the Indemnified Party in connection with any settlement made without the Indemnifying Party's prior written consent. The



Indemnified Party shall be permitted to monitor the defense of any such Action with counsel of its choosing at its sole cost and expense.

Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, LOSS OF DATA, OR LOST PROFITS DAMAGES OF ANY KIND (INCLUDING ANY LOST REVENUE, PROFITS, SAVINGS, BUSINESS OPPORTUNITIES, USE, OR GOODWILL) HOWEVER ARISING, REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF IMPRIVATA EXCEED THE FEES PAID AND PAYABLE BY CUSTOMER UNDER THE AGREEMENT DURING THE PRECEDING TWELVE-MONTH PERIOD FOR THE APPLICABLE CLOUD SERVICE GIVING RISE TO THE LIABILITY CLAIM(S). MONETARY DAMAGES AS LIMITED BY THIS SECTION SHALL SERVE AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT FOR WHICH AN EXCLUSIVE REMEDY IS NOT PROVIDED, AND AS CUSTOMER'S SOLE AND EXCLUSIVE ALTERNATIVE REMEDY SHOULD ANY EXCLUSIVE REMEDY HEREUNDER BE FOUND TO FAIL OF ITS ESSENTIAL PURPOSE.

Customer List

Customer agrees that Imprivata may include Customer's name and logo on its customer lists, including in on-line and printed forms.

Force Majeure

Neither party is responsible for any delays or failure in performance (except for payment of fees owed) to the extent that such failure is due to a Force Majeure Event. Both parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures.

Governing Law

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT



REGARD FOR PRINCIPLES OF CONFLICT OF LAWS. EACH PARTY HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION AND FORUM OF THE STATE AND FEDERAL COURTS IN THE COMMONWEALTH OF MASSACHUSETTS IN ALL QUESTIONS AND CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS AND THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) AS ADOPTED BY ANY STATE ARE SPECIFICALLY EXCLUDED FROM APPLICATION HEREUNDER.

Equitable Relief

The parties agree that, because of the proprietary nature of their respective Confidential Information (including the Cloud Services in Imprivata's case), legal remedies due to a party's breach of its obligations under this Agreement may be inadequate and that in the event of a breach or threatened breach, a party may be entitled to seek equitable relief, including injunctive relief, without the posting of any bond, in addition to all other remedies provided under this Agreement or available at law.

Assignment

This Agreement is binding upon and inures to the benefit of the parties, their successors and permitted assigns. Neither party may assign or transfer its rights hereunder without the other party's prior written consent, provided that Imprivata may assign this Agreement in connection with a merger, corporate reorganization, consolidation, or the sale of all or substantially all of its assets or equity.

Entire Agreement

This Agreement and the appendices attached hereto (and any Imprivata Order Forms) contains the entire agreement of the parties with respect to the subject matter contemplated by this Agreement and supersedes all prior and contemporaneous agreements, representations and understandings, whether written or oral with respect to such subject matter. No modification or waiver of any provision hereof is effective unless in writing and signed by each party. Imprivata shall not be subject to any provisions of any pre-printed purchase order, or any of Customer's policies, regulations, rules, or the like, including those set forth in any of Customer's sponsored registration system

(collectively, “Policies”), even if such Policies require affirmative acknowledgement from a Imprivata representative.

Severability

If any provision of this Agreement or the application thereof to any party or circumstances shall, to any extent, now or hereafter be or become invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Section headings used in this Agreement are intended for convenience only and shall not affect the interpretation or construction of this Agreement.

Independent Contractors

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries under this Agreement.

Future Products

Imprivata may from time to time, prior to or during the term of this Agreement, disclose to Customer information related to planned future products, features or enhancements. Imprivata’s development efforts and plans are subject to change at any time, without notice; Imprivata provides no assurances that Imprivata will introduce any such future products, features or enhancements and assumes no responsibility to introduce such products, features or enhancements. Customer acknowledges that its current purchasing decisions are not made based on the reliance on any such future timeframes or specifics described to Customer.

Evaluation, Trial or Beta Cloud Services[Copy anchor link: Evaluation, Trial or Beta Cloud Services](#)

Imprivata may offer certain Cloud Services to Customer for evaluation, trial or beta purposes (“Trial Services”). In such event, Imprivata grants to Customer a nonexclusive, limited, royalty-free, nontransferable right to use the Trial Services solely for Customer’s internal evaluation purposes during the period designated by Imprivata on the Order Form (or if not designated, 30 days). Notwithstanding any other provision contained herein, such Trial Services are



provided to Customer “as is” without indemnification, support, service level agreement, or warranty of any kind, express or implied. Imprivata assumes no liability arising out of or in connection with Customer’s use of such Trial Services and shall not be liable for any direct, indirect, special, incidental, consequential, or punitive damages of any kind, except with respect to losses that cannot be legally limited or excluded under law, related to Customer’s use of the Trial Services. Except to the extent the terms in this Section conflict with the terms set forth in this Agreement, all other terms of this Agreement shall apply to the Trial Services.

Applicable Laws

Imprivata shall comply with all applicable laws to the extent that such laws by their terms are expressly applicable to Imprivata’s delivery of the Services under this Agreement and impose obligations upon Imprivata in its role as a software and services provider with respect to the Services provided under this Agreement. Customer shall comply with all applicable laws to the extent that such laws by their terms, are expressly applicable to Customer’s use and receipt of the Services under this Agreement and impose obligations upon Customer with respect to the Services provided under this Agreement. Customer is solely responsible for determining whether the Services enable Customer to comply with laws applicable to Customer.

No Waiver

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party’s right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument. This Agreement may be executed by facsimile or by electronic transmission of a pdf file.



Notice

Except as may be otherwise set forth herein, all notices, requests, demands and other communications hereunder will be in writing (email acceptable) and will be deemed to have been duly given: (i) on the next day if delivered personally or electronically to such party; (ii) on the date three (3) days after mailing if mailed by registered or certified mail; or (iii) on the next day if delivered by courier. All notices to Imprivata shall be sent to the following address: Imprivata, Inc., Attn: Legal Department, 20 CityPoint 480 Totten Pond Road, 6th Floor, Waltham, MA 02451 or dept.legal@IMPRIVATA.com. Customer may designate in writing the relevant contact to which all notices shall be addressed.



Imprivata End User License Agreement for SecureLink Software

This Imprivata End User License Agreement for SecureLink Software (the “Agreement”) is by and between Imprivata, Inc., a Delaware corporation, with its principal place of business at 20 CityPoint, 6th floor, 480 Totten Pond Rd., Waltham, MA 02451 (“Imprivata”), and you (“Company” or “you”). Collectively, Imprivata and Company may be referred to as the “Parties” or in the singular as “Party”. By accessing and using the Software (defined below) you (either you as an individual or, if the Software will be used by an entity, on behalf of that entity) represent and agree that you have the capacity and authority to bind yourself or, if applicable, the applicable entity, to the terms of this Agreement and agree to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, you may not access and use the Software. This Agreement is effective as of the date Company accesses the Software (“Effective Date”). Any terms and conditions in a purchase order (or in any similar document) which are in addition to, or conflict or are inconsistent with these terms are hereby rejected and superseded by the terms contained herein. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

Background

Imprivata provides a software solution for remote computer access and support (the “Software”). This Agreement sets forth the terms pursuant to which Imprivata will license the Software to Company and provide other related services set forth in this Agreement and Imprivata Quote. The term “Imprivata Quote” or “Quote” means the supplemental document issued by Imprivata, which specifies the Software, Services (defined below) and any other software and/or hardware which may be purchased by Company, and the price associated with each.

Software License

- 1. Software License. Subject to the timely payment by Company of all applicable fees, Imprivata hereby grants to Company, and Company hereby accepts, a limited, non-exclusive, term-limited, non-transferable, non-sublicensable, worldwide license to install a single instance of the Software and to use and access the Software during the Term (defined below) solely (i) in connection with Company’s**



normal business operations, (ii) in accordance with the documentation provided with the Software (the "Documentation"), and (iii) subject to any limitations set forth in the Quote. If Company has purchased a business continuity package then, in addition to the single instance, Company may: (i) for High Availability, install up to two additional instances of the Software solely for the purpose of high availability; and (ii) for Disaster Recovery, install one additional instance for the purposes of disaster recovery. If Company has purchased a Sandbox instance of the Software, Company may use one additional instance of the Software for non-production test purposes. If the Software is provided on an Imprivata server then the Software may only be used on the server on which it is provided. Notwithstanding the foregoing, if Company has licensed the Imprivata for Vendors Software (as specified in the Quote), Company may install the portion of the software on Company's customers' systems that enables Company to remotely access its customers' systems, all of which as set forth more fully in the Documentation (the "Gatekeeper Software"). The installation and use of the Gatekeeper Software is subject to the license agreement provided with the Gatekeeper Software.

2. **Use by Employees and Contractors.** Employees or authorized independent contractors of Company may use the Software provided that all such use shall be solely for the benefit of Company and in accordance with the terms and conditions of this Agreement. Company shall ensure that its employees and any independent contractors comply with the terms and conditions contained in this Agreement. Company shall remain fully liable for all acts and omissions of its employees and independent contractors, as if such acts and omissions had been committed by Company itself. The Software may not be used by Company to facilitate remote access by its employees or contractors to Company's own systems unless Company has purchased an internal use license. Notwithstanding the foregoing, individuals may use the Software to remotely access Company's systems for the sole purpose of facilitating remote access by Vendors to Company's systems.
3. **Limitations.** Except as otherwise authorized in writing by Imprivata, Company shall not, and shall not permit any other person to, access or use the Software except as expressly permitted by this Agreement. For



purposes of clarity and without limiting the generality of the foregoing, Company shall not, except as this Agreement expressly permits: (i) decompile, reverse engineer, decode, or disassemble the Software or otherwise attempt to reduce the Software to a human perceivable form in whole or in part; (ii) decrypt, circumvent, bypass, breach, or disable any security or other technological features or measures of the Software; (iii) access or attempt to access or use the Software for purposes of competitive analysis of the Software, the development, provision, or use of a competing software service or product or any other purpose that is to Imprivata's detriment or commercial disadvantage; (iv) copy, publish, release, rent, lease, loan, sell, distribute, or transfer the Software or Documentation; (v) frame or mirror any content forming part of the Software; (vi) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party; (vii) alter, modify, adapt, translate, or create derivative works based upon the Software or Documentation either in whole or in part; (viii) remove any copyright notice or other proprietary rights notices that may appear in or on the Software or Documentation; (ix) perform any security or penetration testing of the Software; (x) install or run an agent on any Imprivata Software or device; or (xi) distribute any virus, trojan horse, or other malicious code via the Software. Company will use the Software and Documentation in compliance with all applicable laws and regulations, and refrain from any unethical conduct or any other conduct that tends to damage the reputation of Imprivata. However, where Company has other rights under statute that make any portion of the foregoing contractual prohibition void, Company agrees to provide Imprivata with reasonably detailed information regarding any intended disassembly or de-compilation. Company may not access the Software if Company is a direct competitor of Imprivata. With any mission-critical activity, the Software should not be Company's only means of receiving or providing remote support, and Company acknowledges and agrees that it is responsible for taking steps to protect against Software and system failures, including (without limitation) providing back-up remote access methods.



4. **Reservation of Rights.** The Software provided under this Agreement is licensed, and not sold. Imprivata (and its licensors) retains all title, interest, and ownership rights in and to the Software and Documentation and reserves all rights not expressly granted to Company in this Agreement. If Company provides any suggestions, ideas, enhancement requests, feedback (including identifying potential errors and improvements), recommendations or other information relating to the Software to Imprivata (collectively "Feedback"), then Imprivata may use the Feedback without payment or restriction. The Imprivata name, the Imprivata logo, and the product names associated with the Software are trademarks of Imprivata, and no right or license is granted to use them. Company will not accrue any residual rights to the Imprivata Software or any related technology, including any rights to the underlying intellectual property rights.

Services; Updates

1. **Services.** Imprivata will provide Company with the implementation, training, and support services identified in the Quote (collectively, the "Services").
2. **Updates.** Imprivata may update the Software or Documentation from time to time. During the Term, Imprivata will provide Company with all updates to the Software and Documentation that it makes generally commercially available. Company may decide whether to install updates to the Software unless Imprivata expressly notifies Company that a particular update is mandatory. The terms "Software" and "Documentation" shall include all updates provided to Company by Imprivata under this **Section 3.2.**

Account Information and Data

1. "Company Data" means any data, information or material provided or submitted to the Software by the Company in the course of using the Software. "Resultant Data" means data and information related to Company's use of the Software that is used by Imprivata in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the



Software. For the avoidance of doubt, Company Data excludes Resultant Data.

- 2. Imprivata does not own any Company Data. Company, not Imprivata, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Company Data. Company hereby grants to Imprivata a non-exclusive, fully-paid and royalty-free license to reproduce, distribute, perform, display and otherwise use the Company Data as necessary or reasonable to provide the Software and Services to Company as described herein and to collect, compile and use De-identified information collected in the performance of the Software and Services ("Benchmarking Statistics"), for the purpose of analyzing and reporting the effectiveness of and any trends in corporate ethics and compliance programs according to industry, company size, country, geographic region or other relevant classification or for other uses as Imprivata may decide. "De-identified information" means data or information that neither identifies nor provides a reasonable basis to identify a company or an individual, where, without limitation, the following identifiers have been removed: company names and the names of individuals, addresses, account numbers, social security numbers, phone numbers, e-mail address(es) and any other information which could reasonably be anticipated to identify, when taken in the aggregate, a specific company, organization or individual. Company shall have no right to access or use Imprivata's aggregate Benchmarking Statistics. Company represents and warrants that: (i) Company owns or otherwise has the right to grant the license set forth in this section for the Company Data, and (ii) the Company Data does not violate the privacy rights, publicity rights, copyright rights, or other rights of any person or entity. Imprivata has the right to delete any Company Data in Imprivata's possession at any time.**

Fees

- 1. Fees. Unless purchasing through an Imprivata authorized reseller, upon execution of the Quote, Company will pay Imprivata the license fees set forth in the Quote for the first Contract Year (as defined below). The fees for each subsequent Contract Year will be calculated in accordance with**



the Quote. Imprivata may invoice for each Contract Year up to thirty days prior to the start of the Contract Year. Fees are typically determined based on the usage of the Software during the preceding Contract Year. Accordingly, any increase in Company's use of the Software (e.g., more Concurrent Connections or use by more Vendors, as applicable) will require payment of additional fees for the subsequent Contract Year in accordance with the Quote. Imprivata may update the per-unit pricing for any Contract Year or Renewal by providing Company written notice at least ninety days prior to the end of the then-current Contract Year or Renewal Term. The following terms may be used in the Quote in calculating the applicable fees:

- i. "Average Peak Usage" for any given Contract Year means the number calculated by averaging the peak number of Concurrent Connections during the three highest months of the applicable Contract Year.
 - ii. "Concurrent Connections" means the total number of simultaneous connections on Company's installation of the Software at any one time.
 - iii. "Contract Year" shall mean the first twelve month period immediately following the Effective Date and each subsequent twelve month period thereafter.
 - iv. "Site" shall mean a single physical location unless otherwise defined in the Quote (or its equivalent if purchasing through an authorized reseller).
 - v. A "Vendor" means a single entity using the Software to access Company's systems.
2. **Service Fees.** Company will pay any fees for Services provided by Imprivata in accordance with the Quote. Company will reimburse Imprivata for any pre-approved, out-of-pocket expenses incurred by Imprivata in connection with performing any Services at Company's site.
3. **Payment of Fees.** (a) Imprivata shall sell to Company and Company shall purchase from Imprivata the Software as set forth in the applicable Imprivata Quote (or its equivalent if purchasing through an authorized



reseller). Imprivata will invoice Company as set forth on the Imprivata Quote. Company will pay invoices within 30 days of each invoice date. All purchases are non-cancellable and non-refundable. Imprivata may withhold shipments and cease providing any services until past-due payments are made. Late payments are subject to a charge of the lesser of 1.5% per month or the maximum allowed by law during such time as any payment is late as well as collection costs, including reasonable collection and attorney's fees. Prices do not include, and Company shall be responsible for, all applicable taxes of any kind due in respect of the transactions contemplated by this Agreement, except taxes on Imprivata's net income.

Term and Termination

1. **Term.** The initial term of this Agreement will begin on the Effective Date and continue for the number of Contract Years indicated on the Quote (or its equivalent if purchasing through an authorized reseller) (the "Initial Term"). This Agreement will automatically renew for subsequent one-year periods (each a "Renewal Term") unless either Party gives the other Party written notice of termination at least sixty days prior to the end of the then-current Term. The Initial Term together with all Renewal Terms are referred to in this Agreement as the "Term."
2. **Termination.** Either Party may terminate this Agreement by written notice if the other Party materially breaches this Agreement and fails to cure the breach within thirty days of receiving written notice specifying the breach in reasonable detail.
3. **Survival.** Sections 2.2, 2.3, 2.4, and 8.4, and Articles 4, 5, 6, 7, 9, 10 and 11 shall survive any termination or expiration of this Agreement, regardless of the cause of termination.

Confidentiality

1. **Confidentiality.** "Confidential Information" means any confidential or proprietary information of a Party (the "Discloser") that is disclosed in any manner to the other Party (the "Recipient") in connection with this Agreement and that at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary," (ii) is otherwise reasonably identifiable as the confidential or proprietary information of Discloser,



or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information. Imprivata's "Confidential Information" shall include all features and functionality of the Software and Documentation and the results of any benchmark or other tests of the Software. Recipient shall not disclose Discloser's Confidential Information to any third party without Discloser's prior written approval; provided, that, Recipient may disclose the Confidential Information to its employees, contract personnel, subcontractors, officers, directors, shareholders, consultants, agents, attorneys, accountants, or advisors (collectively, "Representatives") who need to know such information for the purposes of this Agreement, provided that such Representatives shall be informed by Recipient of the confidential nature of the Confidential Information and shall have agreed in writing to terms and conditions as protective of the Confidential Information as those in this Agreement. Recipient shall use the same procedures to protect Discloser's Confidential Information as it uses to protect its own Confidential Information, but in any event no less than commercially reasonable procedures.

2. **Exclusions.** The restrictions under Section 7.1 above shall not apply to information that: (i) Recipient independently develops without use of Discloser's Confidential Information; (ii) was, at the time of disclosure, already known to Recipient without restriction on use or disclosure and was not obtained from Discloser; (iii) is lawfully disclosed to Recipient without restriction on use or disclosure by a third party who is not required to maintain its confidentiality; or (iv) is publicly available through no fault of the Recipient.
3. **Ownership of Confidential Information.** The Confidential Information of Discloser is and will remain the property of Discloser. Nothing in this Agreement grants or confers any rights to Recipient by license or otherwise in Discloser's Confidential Information, except as expressly provided in this Agreement.
4. **Remedies Upon Breach.** Recipient agrees that in the event of a breach or threatened breach of this Agreement, Discloser may have no adequate remedy in money damages and, accordingly, will be entitled to seek an



injunction against such breach, in addition to any other legal or equitable remedies available to Discloser.

- 5. Legally Required Disclosure.** If Recipient is legally required to disclose any of Discloser's Confidential Information, then it may do so provided that Recipient (i) provides prompt written notice to Discloser (to the extent permitted by law), (ii) provides all reasonably requested assistance to Discloser in attempting to limit the scope of the disclosure, and (iii) only discloses Discloser's Confidential Information to the extent actually required by law.

Warranties and Disclaimers

- 1. Mutual Representations and Warranties.** Each Party represents and warrants that: (i) it has the legal power to enter into this Agreement; (ii) the signatory hereto has the authority to bind the applicable organization; and (iii) when executed and delivered, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies.
- 2. Software Warranty.** Imprivata represents and warrants that the Software will conform to the Documentation in all material respects during the Term. COMPANY'S EXCLUSIVE REMEDY, AND IMPRIVATA'S ENTIRE LIABILITY, FOR ANY BREACH OF THIS SECTION 8.2 IS LIMITED TO, AT IMPRIVATA'S OPTION, REPAIR OR REPLACEMENT OF ANY MATERIAL, REPRODUCIBLE IMPAIRMENT TO THE FEATURES AND FUNCTIONALITY IN THE SOFTWARE (OR DEFECTIVE PORTION OF THE SOFTWARE), OR REFUNDING THE FEES PAID TO IMPRIVATA FOR THE DEFICIENT SOFTWARE FOR THE THEN-CURRENT CONTRACT YEAR, IN WHICH CASE, COMPANY SHALL IMMEDIATELY RETURN AND CEASE USE OF ALL COPIES OF THE SOFTWARE AND DOCUMENTATION.
- 3. Service Warranty.** Imprivata represents and warrants that the Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. COMPANY'S EXCLUSIVE REMEDY, AND IMPRIVATA'S ENTIRE LIABILITY, FOR ANY BREACH OF THIS SECTION 8.3, OR ANY CLAIM BASED ON THE FAILURE



OR UNAVAILABILITY OF THE SERVICES, IS LIMITED TO RE-PERFORMANCE OF THE SERVICES OR, AT IMPRIVATA'S OPTION, REFUNDING THE FEES PAID TO IMPRIVATA FOR THE DEFICIENT SERVICES.

- 4. DISCLAIMERS. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IMPRIVATA EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, AND THE SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, IMPRIVATA DOES NOT WARRANT (I) THAT THE SOFTWARE, DOCUMENTATION, OR THE SERVICES WILL BE FREE FROM ANY INTERRUPTIONS, DELAYS, INACCURACIES, SERVER DOWN-TIME, ERRORS, OR OMISSIONS, (II) THE PERFORMANCE OR RESULTS COMPANY MAY OBTAIN BY RECEIVING THE SERVICES OR USING THE SOFTWARE OR DOCUMENTATION, OR (III) THE SOFTWARE, DOCUMENTATION, OR THE SERVICES WILL MEET COMPANY'S REQUIREMENTS. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, OR PERFORMANCE OF THE SOFTWARE, DOCUMENTATION, OR ANY SERVICES, NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY, CONDITION, REPRESENTATION, OR GUARANTY BY IMPRIVATA. COMPANY SHALL BE SOLELY RESPONSIBLE FOR MAINTAINING ALL APPROPRIATE BACKUPS OF ITS FILES AND DATA.**

Limitations of Liability

- 1. LIMITATION OF LIABILITY. EXCEPTING ONLY IN THE EVENT OF A BREACH BY YOU OF SECTION 2 ("SOFTWARE LICENSE") OR A BREACH BY EITHER PARTY OF SECTION 7 ("CONFIDENTIALITY"), NEITHER PARTY IS LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOST PROFITS, FORESEEABLE OR UNFORESEEABLE, OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL, LOST OR DAMAGED DATA OR SOFTWARE, LOSS OF**



USE OF PRODUCTS, OR DOWNTIME) ARISING FROM THE SALE, DELIVERY OR USE OF THE APPLIANCES, PERFORMANCE OF ANY SERVICES OR ANY OTHER ACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IMPRIVATA'S MAXIMUM LIABILITY TO YOU, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE FEES PAID AND PAYABLE BY YOU DURING THE PRECEDING TWELVE MONTH PERIOD. MONETARY DAMAGES AS LIMITED BY THIS SECTION SHALL SERVE AS YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM UNDER THIS AGREEMENT FOR WHICH AN EXCLUSIVE REMEDY IS NOT PROVIDED, AND AS YOUR SOLE AND EXCLUSIVE ALTERNATIVE REMEDY SHOULD ANY EXCLUSIVE REMEDY HEREUNDER BE FOUND TO FAIL OF ITS ESSENTIAL PURPOSE. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY IS HEREBY INTENDED.

THE DISCLAIMER OF WARRANTIES AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT ARE FUNDAMENTAL PARTS OF THE BASIS OF IMPRIVATA'S BARGAIN HEREUNDER, AND COMPANY ACKNOWLEDGES THAT SUCH PROVISIONS REPRESENT A REASONABLE ALLOCATION OF RISK.

2. Jurisdictions Preventing Limitation or Exclusion of Warranty or Liability.

Since some states do not allow certain limitations or exclusions of warranties or liability, some or all of the limitations and exclusions set forth in Sections 8.4 and 9.1 above may be held unenforceable as applied to Company. In such cases, Imprivata's liability shall be limited to the greatest extent permitted under applicable law.

Indemnification

- 1. Claims Related to the Software. Provided that Company complies with the procedures set forth in Section 10.5 and subject to Section 10.2, Imprivata will, at Imprivata's expense, defend and/or settle any claim, suit or proceeding brought by a third party against Company or Company's officers, directors, employees, and affiliates (collectively, "Company Parties") alleging that the Software, as provided by Imprivata, infringes any copyright, trademark, trade secret or patent protectable under U.S. law that is issued as of the date of this Agreement. In**



addition, Imprivata will pay any judgment awarded against Company or any settlement amount agreed to by Imprivata and, subject to Section 10.5, any authorized expenses incurred by Company all in relation to the indemnified claim. This indemnity shall be the Company's exclusive remedy with respect to any claim of infringement.

- 2. Exclusions. Imprivata will have no obligation under Section 10.1 with respect to any claim of infringement arising out of or based upon: (i) Company Data used with the Software or otherwise, (ii) use of the Software in any manner other than as expressly authorized and contemplated in this Agreement and the Documentation, (iii) the combination of the Software with any other software, hardware, material, or processes, or (iv) Company otherwise causing the Software to become infringing.**
- 3. Injunction. If Imprivata reasonably believes that a claim of infringement relating to the Software may arise, Imprivata may, without limiting Imprivata's indemnity obligations hereunder, procure the right for Company to continue to use the Software or modify the Software in a functionally equivalent manner so as to avoid such claim of infringement. If the foregoing options are not available on commercially reasonable terms and conditions, Imprivata may immediately terminate the Agreement and refund to Company a prorated amount of prepaid fees for access to the Software actually paid by Company for the remainder of the then-current Contract Year.**
- 4. Claims Related to Company Data. Provided that Imprivata complies with the procedures set forth in Section 10.5, Company will, at Company's expense, defend and/or settle any claim, suit or proceeding brought by a third party against Imprivata or Imprivata's officers, directors, employees, and affiliates (collectively, "Imprivata Parties") and arising out of or related to Company Data or any breaches of Section 2.3. In addition, Company will pay any judgment awarded against Imprivata or any settlement amount agreed to by Company and, subject to Section 10.5, any authorized expenses incurred by Imprivata all in relation to the indemnified claim.**
- 5. Procedure. If one Party (the "Indemnatee") receives any notice of a claim or other allegation with respect to which the other Party (the**



“Indemnitor”) has an obligation of indemnity hereunder, then the Indemnitee will, within 15 days of receipt of such notice, give the Indemnitor written notice of such claim or allegation setting forth in reasonable detail the facts and circumstances surrounding the claim. The Indemnitee will not make any payment or incur any costs or expenses with respect to such claim, except as requested by the Indemnitor or as necessary to comply with this procedure. The Indemnitee will not make any admission of liability or take any other action that limits the ability of the Indemnitor to defend the claim. The Indemnitor shall immediately assume the full control of the defense or settlement of such claim or allegation, including the selection and employment of counsel, and shall pay all authorized costs and expenses of such defense. The Indemnitee will fully cooperate, at the expense of the Indemnitor, in the defense or settlement of the claim. The Indemnitee shall have the right, at its own expense, to employ separate counsel and participate in the defense or settlement of the claim. The Indemnitor shall have no liability for costs or expenses incurred by the Indemnitee, except to the extent authorized by the Indemnitor or pursuant to this procedure.

General Provisions

- 1. Relationship of the Parties; Third Party Beneficiaries. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.**
- 2. Force Majeure. Neither Party is responsible for delays or failures to perform its responsibilities under this Agreement (other than payment of money due) due to causes beyond its reasonable control, including: acts of God; acts of government; flood; fire; earthquakes; tornadoes; civil unrest; acts of terror; strikes or other labor problems; computer, telecommunications, internet service provider, or hosting facility failures or delays involving hardware, software, or power systems; pandemic or disease; denial of service attacks; or power failures.**
- 3. Attorney’s Fees. The prevailing Party in disputes concerning this Agreement shall be entitled to the costs of collections and enforcement, including but not limited to reasonable attorney’s fees, court costs and**



all necessary expenses. Notwithstanding anything in this Agreement to the contrary, in the event of Company's bankruptcy or insolvency, Imprivata will be entitled to recover from Company Imprivata's costs and expenses, including, without limitation, reasonable attorneys' fees and costs, that Imprivata incurs enforcing and/or otherwise protecting Imprivata's rights and remedies under this Agreement or amendments and modifications thereto.

- 4. Company Trademarks. Company agrees that Imprivata can list Company on Imprivata's website as a customer of Imprivata and hereby grants Imprivata a limited, non-exclusive license to copy and display Company's logo or trademark on Imprivata's website in connection with its customer list. Imprivata will provide samples of use upon request and will modify the use as reasonably requested by Company.**
- 5. Notices. Any notices or other communications required to be given in writing under this Agreement ("Notices") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). Notices must be delivered by personal or courier delivery (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only upon receipt by the receiving party.**
- 6. Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided are in addition to, and not exclusive of, any other remedies available at law or in equity.**
- 7. Invalidity. If any provision of this Agreement is determined to be illegal or unenforceable, then the provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in a manner that complies with applicable law. The remainder of this Agreement, if capable of substantial performance, will remain in full force and effect.**



- 8. Assignment.** Neither Party may assign this Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, Imprivata may assign this Agreement in its entirety, without the consent of Company, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Imprivata's assets. Any attempt by a Party to affect an assignment in breach of this Section 11.8 shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.
- 9. Governing Law; Venue.** This Agreement and the rights and obligations of the parties will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts in the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) as adopted by any state are specifically excluded from application hereunder.
- 10. Case Study.** Company agrees to reasonably cooperate with Imprivata to serve as a reference account upon request and to allow a case study to be developed about Company's experience (e.g. in video or text form), which Imprivata may publish or otherwise use for marketing purposes.
- 11. Entire Agreement; Amendment.** This Agreement, including the Quote, constitutes the entire agreement between the parties with respect to the subject matter set forth herein, and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. No terms, provisions, or conditions of any purchase order, acknowledgement, check, or other business form that Company may use in connection with the acquisition or licensing of the Service or Software will have any effect on the rights, duties, or obligations of the parties under this Agreement, regardless of any failure of Imprivata to object to such terms, provisions, or conditions. The Quote and this Agreement shall be read together as a single agreement so as to give effect to all terms in both documents to the extent possible. To the extent there is a direct conflict between this



Agreement and the Imprivata Quote, the Imprivata Quote shall control. As used in this Agreement, the terms “including,” “include,” and “includes” are not limiting and shall be deemed to be followed by the phrase “without limitation.” Use of the terms “hereunder,” “herein,” “hereby,” and similar terms refer to this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties hereto.

- 12. Export. Company agrees to comply with all U.S. export and re-export control laws and regulations and the U.S. economic sanctions, including the Export Administration Regulations (“EAR”) administered by the U.S. Department of Commerce, the laws and regulations administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“ITAR”) administered by the U.S. Department of State, and not cause Imprivata to violate the same. Notwithstanding anything contained in this Agreement to the contrary, Company shall not export or import, directly or indirectly, the Software or information pertaining thereto to or from any country (such as Cuba, Iran, North Korea, Sudan, or Syria), to which such export or import is restricted or prohibited or as to which such government or any agency thereof requires a license or other governmental approval at the time of export or import without first obtaining such license or approval. Furthermore, Company agrees to cooperate as requested by Imprivata to ensure compliance with any such export or import restrictions. Company agrees to hold harmless and defend, to the fullest extent permitted by law, at Imprivata’s option, Imprivata and its successors and assigns from and against any fines, penalties, judgments, settlements, and reasonable documented costs, including attorney’s fees, that may arise as a result of a failure to comply with this Section 11.11 by Company’s agents, officers, directors or employees.**
- 13. Governmental Use. If Company is a branch or agency of the United States Government or a contractor thereto, then the following provision applies. The Software and Documentation are comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policies set forth in 48 C.F.R.**



12.212; or (ii) for acquisition on behalf of the Department of Defense consistent with the policies set for the in 48 C.F.R. 227.7202-1 (Aug. 1995) and 227.7202-3 (Aug. 1995).

Enterprise Access Cloud Services.

The specifications and system requirements for Enterprise Access, including any additional licenses or subscriptions, are as described in the Documentation.

Pricing Metrics.

Unless purchasing through an authorized reseller, upon execution of the Order Form, Customer will pay Imprivata the applicable fees set forth in the Order Form. Beginning with the initial term of an Order Form and during any subsequent renewal terms, Imprivata will review Customer's number of Vendors throughout the Subscription Term. If Customer's number of Vendors at any point exceeds the Base Statistics, Imprivata will invoice Customer for the difference between the number of Vendors and the Base Statistics for the remainder of the Subscription Term in accordance with the Order Form. Customer will pay such invoice in accordance with the Agreement. The following terms may be used in the Order Form in calculating the applicable fees:

1. "Vendor" means a single entity using the Cloud Service to access Customer's systems.
2. "Base Statistics" means the number of Vendors documented in the initial Order Form.

Usage Limits.

Enterprise Access's pricing is based on designated levels of usage and data storage (each a "Service Allocation") as provided in the table below. Imprivata will use commercially reasonable efforts to notify Customer in writing if Customer has reached 80 percent (80%) of its then current Service Allocation and Customer may increase its Service Allocation. Customer acknowledges that if it exceeds its Service Allocation by (i) exceeding Customer's network usage, then its access to the Cloud Service will be throttled or (ii) exceeding storage limits, then audit data will automatically be deleted.

SLE SKU	Usage Assumptions			
	Machine	Network Usage - Monthly (GB)	Local Storage (GB)	S3 Storage (GB)
SLE - Cloud - 5 Vendor	c5.xlarge	500	50	50
SLE - Cloud - 10 Vendor	c5.xlarge	840	50	90
SLE - Cloud - 15 Vendor	c5.xlarge	1,345	50	140
SLE - Cloud - 25 Vendor	c5.xlarge	2,690	50	290
SLE - Cloud - 35 Vendor	c5.xlarge	2,690	50	290
SLE - Cloud - 50 Vendor	c5.xlarge	2,690	50	290
SLE - Cloud - 75 Vendor	c5.xlarge	4,035	50	430
SLE - Cloud - 100 Vendor	c5.xlarge	4,035	50	430

Restriction on Use by Affiliates.

Section 2.2 (“Affiliates”) of the Agreement shall not apply to Customer’s purchase of Enterprise Access. Customer’s Affiliates shall have no rights under this Agreement without Imprivata’s express written consent.